

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8967 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgement?-No.

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2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy
of the judgement?-No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil
Judge?-No.

SUBHASHCHANDRA D SHAHRMA

Versus

STATE OF GUJARAT

Appearance:

MR BR GUPTA for Petitioner

Mr.D.N. Patel, Assistant GOVERNMENT PLEADER,
for the Respondents.

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

Date of decision: 09/12/98

C.A.V. JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

1. Rule. Mr.D.N. Patel, A.G.P., waives service of
Rule on behalf of the respondents. With the consent of

the parties, the matter is taken up for final hearing.

2. The petitioner challenges Annexures 'A' and 'B' Circulars issued by the 2nd respondent herein. As per Annexure 'A' Circular, the 2nd respondent, Transport Commissioner, has directed that all Motor Vehicle Inspectors performing their duty as R.T.O. / A.R.T.O. will have to recover a minimum amount of Rs.5,000/- by way of cash penalty per day by carrying out checking at appropriate places apart from their duty, before or after the duty hours. By Annexure 'B' order dated 30.9.1998, the target amount was enhanced to Rs.10,000/-. The petitioner contends that because of the fixation of this minimum amount of Rs.10,000/- to be recovered from the motoring public per day, the Inspectors, R.T.Os. and A.R.T.Os. are causing undue harassment to the owners of the vehicle. According to the petitioner, this is not a lawful exercise of power. The petitioner would also contend that in many cases, the offence, for which fine is imposed, is coming under Section 192A of the Motor Vehicles Act and the same is not compoundable under Section 200 of the Motor Vehicles Act and these Officers are illegally compounding the offence to extract money from the public. It is submitted that the proper course is to file the complaint before the competent Magistrate and the court alone would have jurisdiction to impose fine.

3. We heard the petitioner's counsel and the Assistant Government Pleader. No affidavit-in-reply has been filed on behalf of the respondents, but the learned Assistant Government Pleader supported Annexures 'A' and 'B' Circulars and it was submitted that the owners of the Motor Vehicles are violating many of the provisions contained in the Motor Vehicles Act. It is further stated that private vehicles are frequently used as stage carriage vehicles and that the conditions and terms of licence are often violated by the owners of the motor vehicles and with a view to check these illegalities, the Inspectors, R.T.Os. and A.R.T.Os. are given instructions to be carried out while exercising powers under Section 86(5) of the Act.

4. Annexure 'B' order has been passed in supersession of Annexure 'A' order. By Annexure 'A' order, the R.T.Os. and A.R.T.Os. have been directed to collect Rs.5,000/- per day as fine and they are directed to carry out on-the-spot checking of the vehicles. By Annexure 'B' order, this amount was enhanced to Rs.10,000/-. As per the provisions contained in the Motor Vehicles Act, the R.T.Os., A.R.T.Os. and Checking

Inspectors can check the vehicles to see whether owners of the vehicles are violating any of the provisions contained in the Act or they are violating the terms and conditions of the licences issued to them. As regards certain offences, they are competent to levy fine on the owners of the vehicle. Section 200 of the Act says that certain offences mentioned therein are compoundable. In the present Special Civil Application, the grievance of the petitioner is that the authority was not justified in fixing any target amount for the purpose of levying the fine. The contention of the petitioner has got force. The quantum of fine is to be fixed on the basis of the nature of the violation of the provisions of the Act or the terms and conditions of the licence. If the offender has committed a grave illegality, naturally, the fine shall be on the higher side. If it is of a trifle nature, the fine shall not be of a higher amount. Various other factors also shall be taken into consideration by the Officer, who is levying the fine. If the offence is committed by an owner of a motor vehicle in a busy city, it may have serious repercussion, whereas if it is in a village area, the same may not be of that seriousness. All these factors should be taken into consideration by the Officer, who is imposing the fine. Therefore, a direction by the superior authority to collect a particular amount within a specified time, certainly, affects the discretionary power invested in the Officer, who is enforcing the law. This would adversely affect the interest of the public. In order to achieve the target, the Officer, invested with the power to impose fine, would resort to unfair means. Therefore, Annexures 'A' and 'B' Circulars are against the interest of the public and it is an unreasonable and illegal exercise of power.

5. For the above reasons, we are constrained to set aside Annexures 'A' and 'B' orders issued by the 2nd respondent. We make it clear that the 2nd respondent would be at liberty to give appropriate guidelines to the subordinate Officers in the matter of imposing fine.

6. Rule is made absolute to the aforesaid extent.

(apj)